

MINUTES
ZONING BOARD OF APPEALS
APRIL 13, 2007

Location: Conference Room, 2 Fairgrounds Road, Nantucket, MA
Call to Order: 12:08 PM
Members Present: Nancy Sevens, Michael O'Mara, Kerim Koseatac
Alternates Present: David Wiley, Burr Tupper
Absent: Edward Toole, Dale Waine
Staff: Linda Williams, Administrator
Department Staff: Marcus Silverstein, Zoning Enforcement officer

Approval of Minutes by unanimous consent: March 2007.

OLD BUSINESS APPLICATIONS:

**1. MONCURE CHATFIELD-TAYLOR, (079-06), 91 WASHINGTON STREET
EXTENSION:**

Sitting: Sevens, O'Mara, Koseatac, Tupper

Planning Board Rec.: The Planning Board made a negative recommendation as there were issues of planning concern.

Public Comment: None at this meeting. There had been substantial comment at the first hearing.

Representing: Attorney Richard Glidden for the Applicants

Discussion: This matter had been continued without further discussion from September, October, November and December 2006, January, February and March 2007 and then to this meeting. Glidden asked that it be continued again without discussion to the May 11, 2007 meeting.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO MAY 11, 2007 MEETING WITHOUT FURTHER DISCUSSION, AFTER OPENING AT SEPTEMBER 2006 MEETING. BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JUNE 22, 2007, (O'Mara/Koseatac).**

Conditions: NA

2. PRICILLA L. REIS, (085-06), 80 MIACOMET AVENUE:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorneys Arthur Reade and Steven Cohen for the Applicant

Discussion: The matter had been continued without opening from the October, November and December 2006 and January, February, March 2007 meetings and then to this meeting. There were ongoing discussions taking place with various entities that may eventually resolve the issue. Cohen again asked that the matter be continued without opening to the May 11, 2007 meeting.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO MAY 11, 2007 MEETING WITHOUT OPENING; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JUNE 22, 2007, (O'Mara/Koseatac).**

Conditions: NA

**3. OLD NORTH WHARF COOPERATIVE, INC., (003-07), 29A, 29B AND 29C OLD
NORTH WHARF:**

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the Christmas holiday when this matter was first brought before the ZBA.

Public Comment: One letter in opposition from the Nantucket Land Council

Representing: Attorney Arthur Reade and Attorney Whitney Gifford for the Applicant

Discussion: The matter had been continued without opening from the January, February, March 2007 meetings and then to this meeting, whereupon the matter was again continued to June 8, 2007 without opening at the request of the Applicant's attorney.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JUNE 8, 2007 MEETING WITHOUT OPENING; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JULY 27, 2007, (O'Mara/Koseatac).

Conditions: NA

4. JANET P. MURPHY, TRUSTEE OF FISH LANE REALTY TRUST (010-07), 5 SPRING STREET:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Bruce Gilmore for the Applicant

Discussion: Gilmore asked to have the matter continued without opening from March 2007 meeting as he was going to be away. The matter was again continued to May 11, 2007 without opening at the request of the Applicant's attorney.

Action/Vote IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO MAY 11, 2007 MEETING WITHOUT OPENING; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JUNE 22, 2007, (O'Mara/Koseatac).

Conditions: NA

5. BARBARA B. SPITLER, (014-07), 85 MILLBROOK ROAD:

Sitting: Sevens, O'Mara, Koseatac, Tupper

Planning Board Rec.: The Planning Board made a favorable recommendation for either form of relief.

Public Comment: There were letters and comments from an abutter's attorney at the last meeting at which testimony was taken.

Representing: Attorney Arthur Reade for the Applicant, Barbara Spitler was present for herself as Applicant.

Discussion: The matter had been continued after opening in March 2007. Applicant's attorney asked for the matter to be put over to June 8, 2007 without further discussion as he was going to be out of the country in May and one of the sitting Board Members was not going to present for this meeting.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JUNE 8, 2007 MEETING WITHOUT FURTHER DISCUSSION; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JULY 27, 2007, (O'Mara/Koseatac).

Conditions: NA

6. CHARLES W. FISHER, II AND CYNTHIA PERRY FISHER, (020-07), 7 WEST MIACOMET ROAD:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made a favorable recommendation.

Public Comment: None

Representing: Attorney Joseph Guay for the Applicants

Discussion: Guay asked to have the matter continued without opening at the March 2007 meeting as he was going to be away. The matter was again continued to May 11, 2007 without opening at the request of the Applicant's attorney as the client was going to be away.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO MAY 11, 2007 MEETING WITHOUT OPENING; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JUNE 22, 2007, (O'Mara/Koseatac).

Conditions: NA

7. JANE B. CLOUGH AND DAVID CLOUGH (023-07), 3 POND ROAD:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Bill Hunter for the Applicants

Discussion: The matter had been continued from the March meeting. Hunter explained the history of the previous grants of relief in 1995 and 2003, which gradually converted portions of the noncomplying garage into living space for the apartment on the second floor. The siting of the garage was also validated in 1995. Applicants were asking to convert the remaining single-bay garage space on the first floor to increase the living space for the apartment and convert the entire building into a secondary dwelling. All of the required parking would be provided on site. The 12-foot scalar separation and 20% differential requirements for primary and secondary dwellings would continue to be met. Board Members asked that the apartment remain one bedroom. Hunter stated that it would be a hardship to have to move the garage out of the required setback.

Action/Vote: IT WAS VOTED FOUR IN FAVOR (O'MARA, KOSEATAC, WILEY, TUPPER) AND ONE OPPOSED (SEVRENS), TO GRANT THE MODIFICATION OF THE VARIANCE TO ALLOW THE ENTIRE STRUCTURE TO BE CONVERTED INTO ONE SECONDARY DWELLING UNIT, (Koseatac/O'Mara).

Conditions: Limited to a maximum of one bedroom; limited to year-round occupancy; footprint of the garage structure shall remain substantially unchanged, and any additions to allow for second floor access and dormers shall be made outside of the required 30-foot setback area.

NEW BUSINESS:

8. JAMES AND MONIQUE L. HARRINGTON (025-07), 33 TASHAMA LANE:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Jim Harrington for himself as Applicant

Discussion: Harrington stated that he had not been able to convert the ancillary studio structure into a secondary dwelling within the allowable one year time limit of the previously granted variance relief. He was required to put in two aprons for the Planning Board as a condition of relief for the secondary dwelling permit. As he did not have the financial ability to do that immediately, it took him a few years to complete that project. He stated that nothing had changed in the intervening time and he was asking the Board to reissue the relief to waive the 12-foot scalar separation requirement. Only the bulkhead on the main house and the stoop on the studio were sited within that required separation area. There would be no change to the existing situation.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED VARIANCE RELIEF PURSUANT TO SECTION 139-7A(2)(b) TO ALLOW A REDUCTION IN THE REQUIRED 12-FOOT SCALAR SEPARATION BETWEEN THE SECONDARY DWELLING (THE CONVERTED STUDIO) AND THE PRIMARY DWELLING, (Wiley/Koseatac). Applicants had requested a fee waiver as it was difficult to pay the \$300 for the family. Sevens stated that she did not approve of fee waiver requests unless non-profits or town entities. Koseatac made a motion to waive the fee to \$150 and that was seconded by O'Mara. The waiver request was denied on a vote of two in favor (O'Mara, Koseatac) and three opposed (Sevens, Wiley, Tupper).

Conditions: Exhibit A; no expansion of the footprint of the studio or alterations of the use without further relief from this Board; no further encroachment into the 12-foot scalar separation area; but the relief herein granted would not prohibit other conforming improvements being made to the Lot, such as expansion of the primary dwelling and/or a shed in the westerly section of the Locus, and such conforming improvements would not require the Applicants to seek further relief from this Board.

9. MARIANNE BOESKY (026-07), 290 POLPIS ROAD:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Jeff Stetina for the Applicant

Discussion: Attorney requested that the matter be continued without opening to the May 11, 2007 meeting.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO MAY 11, 2007 MEETING WITHOUT OPENING, (O'Mara/Koseatac).

Conditions: NA

10. KATHLEEN R. EVANS, OWNER OF 11 WANOMA WAY; AND RICHARD EVANS AS TRUSTEE OF FIGHTING IRISH NOMINEE TRUST, OWNER OF 13 WANOMA WAY (027-07), 11 AND 13 WANOMA WAY:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Kevin Dale for the Applicant

Discussion: Attorney Dale made a presentation and explained the history of the lots and the previous grant of variance relief. Applicants proposed to merge the two lots, something that was required in 1981 by this Board but was never done as the then owner did not purchase the abutting parcel at 13 Wanoma Way. Nevertheless, the Building Department issued the building permit and then a Certificate of Occupancy without compliance. Part of the relief requested was to have the Board find whether the variance was still active or had it expired due to noncompliance. Applicants proposed to move the existing structure over to conform to the side yard setback requirements and to either add onto the existing dwelling or demolish it and reconstruct it, increasing the ground cover from about 922 SF to about 1,472 SF, less than the maximum allowed for this lot of 1,500 SF. The originally allowed front yard setback distance of five feet would be abandoned and the current setback of the house of ten feet would be maintained. A new conforming septic system had already been placed below the bank and there was no ability to move the house back from Wanoma Way due to the top of the bank being so close to the rear of the house.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED MODIFICATION OF THE VARIANCE RELIEF AND THE REQUESTED SPECIAL PERMIT PURSUANT TO SECTION 139-33A(8), IN ORDER TO COMBINE THE LOTS AND RELOCATE OR DEMOLISH AND RECONSTRUCT THE SINGLE-FAMILY DWELLING, AND FOUND THAT THE ORIGINAL VARIANCE WAS STILL IN EFFECT, (Koseatac/Wiley).

Conditions: Exhibit A; no further expansion within the required setback areas or change of use without further relief from this Board; lots shall be considered merged for zoning purposes and such merger shall be recorded at the Nantucket Registry District prior to the issuance of any building permit; shall comply with the required 10-foot side yard setback distance and shall be located no closer to the front yard lot line than ten feet; a maximum of 1,500 square feet of ground cover.

11. THOMAS FOLEY AND LUCINDA FOLEY, (028-07), 87 SQUAM ROAD:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Kevin Dale for the Applicant, Richard K. Earle, surveyor for the Applicants, Jamie Cabral, contractor for the Applicants, were present.

Discussion: Attorney Dale made a presentation and explained how the about seven inch front yard setback intrusion occurred. The dwelling was completed within the past year but no CO had been issued as there was the zoning violation concerning the front yard setback distance. The building envelop was severely constrained by easements and wetlands areas. During construction the architect changed the dimensions on the front porch without transmitting that information to the builder or the surveyor. The surveyor had changed the location slightly without transmitting the information to the builder. The builder constructed what was on the plans and the Applicants relied on both the architect and the surveyor to site the house. A corner of the front integrated roofed-over porch and corner board of the house itself intruded. Dale stated that the Applicants relied on their experts in good faith and there was nothing to be gained from moving the house seven inches into the front yard setback area. The only affected abutter would be Squam Road. It was unintentional and the result of a series of mis-steps. Earle stated that he had done work for the previous owners and was familiar with the site. The mistake was not made by the Applicants and no one was aware there was a problem until he had done the as-built. Had he known he would have moved the siting of the house back. Sevrens asked why the deck could not be cut off. Dale stated that to remove the corner boards and integrated roofed over deck would be a financial burden and affect the structure. Sevrens expressed concern that property owners were pushing the envelop, building to the maximum and siting structures right on the setback line without giving themselves any margin for error. Other members, while agreeing with that sentiment, felt that the By-law was written for this type of situation. Dale stated that the Applicants had done everything right, and pushed the house as far away from the ocean as possible. Usually it was the other way around.

Action/Vote: **IT WAS VOTED FOUR IN FAVOR (O'MARA, KOSEATAC, WILEY, TUPPER) AND ONE OPPOSED (SEVRENS) TO GRANT THE REQUESTED SPECIAL PERMIT PURSUANT TO SECTION 139-16C(2) TO VALIDATE THE SITING OF THE SINGLE-FAMILY DWELLING AND FOUND THAT NO VARIANCE RELIEF WAS NECESSARY TO BE GRANTED,** (Tupper/Wiley).

Conditions: Exhibit A; no further building within the required front yard setback area without further relief from this Board.

12. NIR RETAIL LLC, (029-07), STRAIGHT WHARF:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper (O'Mara stated for the record that he had done business with NIR in the past but had no ongoing financial involvement with the Applicant)

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Melissa Philbrick

Discussion: Philbrick described the wharf area particulars and the previous grant of relief for two other structures on the same lot on Straight Wharf. The building, that also contains the public bathrooms, is located next to the Hy-line ferry dock and the marina area. The previous tenant, "Allserve" had been selling drinks and other prepackaged food items. The new tenant proposed to do take-out which would serve the walk-by pedestrian traffic in that area. The menu was reviewed. The structure was built as part of the overall renovation of the wharf area in the mid-1960's so the uses and structures on the lot pre-dated the 1972 enactment of the Zoning By-law. There were at least six other take-out/restaurant establishments on the Wharf, none of which had any limitation on menu or hours of operation. The ZEO stated that take-out was take-out and it mattered not what was on the menu, when Sevrens suggested that the menu be limited.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT PURSUANT TO SECTION 139-9B(2)(o), SECTION 139-33A, SECTION 139-18 AND SECTION 139-20, TO ALLOW THE TAKE-OUT FOOD SERVICE ESTABLISHMENT, WAIVE PARKING AND LOADING ZONE, AND BY THE SAME VOTE WAIVED THE SITE PLAN REVIEW,** (Koseatac/Tupper).

Conditions: Shall close no later than 10:00 PM without further relief from this Board; minimum of two trash receptacles shall be provided, one adjacent to the entrance to the building and one within 50 feet of the building.

13. ALICE B. BURNHAM, (030-07), 12 ½ SHERBURNE TURNPIKE:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade

Discussion: Attorney asked that the matter be put over to the June 8, 2007 meeting as he was going to be out of the country in May.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JUNE 8, 2007 MEETING WITHOUT FURTHER DISCUSSION; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JULY 27, 2007, (O'Mara/Koseatac).

Conditions: NA

14. CANDACE A. MILLER AND EDWARD M. BERNARD (031-07), 8 JEFFERSON LANE:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: There were two emails from abutters in opposition.

Representing: Attorney Arthur Reade and Attorney Whit Gifford for the Applicants

Discussion: Attorney asked that the matter be put over to the June 8, 2007 meeting as he was going to be out of the country in May.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JUNE 8, 2007 MEETING WITHOUT FURTHER DISCUSSION; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JULY 27, 2007, (O'Mara/Koseatac).

Conditions: NA

15. LE SELECT PROPERTIES, LLC (032-07), 42 PINE STREET:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Arthur Reade and Attorney Whit Gifford for the Applicant

Discussion: Attorney asked that the matter be put over to the June 8, 2007 meeting as he was going to be out of the country in May.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO JUNE 8, 2007 MEETING WITHOUT FURTHER DISCUSSION; BY THE SAME VOTE, AN EXTENTION FOR ACTION WAS AGREED TO UNTIL JULY 27, 2007, (O'Mara/Koseatac).

Conditions: NA.

16. SEVEN EAGLE LANE CONDOMINIUM (ANDREW DEY AND ANNETTE DEY), (033-07), 7 EAGLE LANE:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: Melissa Philbrick spoke in favor of the project as an abutter on Silver Street. Candy Miller, an abutter, was in support but asked that there be no exterior construction in the summer months that might disturb her renters.

Representing: Attorney Alison Zieff for the Applicant, Andrew and Annette Dey for themselves as Applicants

Discussion: Attorney Zieff made a detailed presentation on the history of the property and the state of the two structures on the lot. There were four kitchens in the lot in the past. There were three condo units in place. Applicants were reducing the number to two kitchens, one in each structure, and reducing the number of condo units to two as part of the overall substantial renovation. The HDC had approved partial demolition of portions of the two structures and approved the final designs. Both structures would be lifted to put new foundations under them with basement space. Though ground cover would be reduced on the larger structure and increased on the smaller structure the overall ground cover would not exceed the existing of about 53%. The renovated structures would not increase the side yard setback intrusions. Applicants would attempt to create an on-site parking space but due to the location of the two structures and a large tree in between the buildings, it may be impossible to accomplish. Andrew Dey also spoke about the current status of the structures. There was substantial discussion about work during the summer, negative impact on surrounding properties and particularly Eagle Lane. Several Board Members expressed concern about possible damage to the surrounding structures with the construction of the basement as well as impact on Eagle Lane in the middle of the summer in particular. O'Mara wanted all necessary measures to be taken, including possibly driving steel sheathing around the perimeter of the lot to prevent damage to Eagle Lane and other structures when the basement was being done. Annette Dey stated that it was in their own best interests to make sure the structures and ground were stabilized. She was a structural engineer and all precautions would be taken.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT PURSUANT TO SECTION 139-33A AND SECTION 139-33A(9) TO ALLOW ALTERATION AND EXPANSION OF THE TWO STRUCTURES AS PROPOSED, INCLUDING NEW FOUNDATIONS AND REALLOCATION OF GROUND COVER, (Koseatac/O'Mara).

Conditions: No exterior construction between June 15th and September 15th; HDC; structures shall be no closer to the lot lines than currently sited; maximum number of kitchens on the lot shall be two; maximum ground cover shall be about 53%.

17. GABRIELA LEVENTI, (034-07), 55 CLIFF ROAD:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Alison Zieff for the Applicants

Discussion: Attorney Zieff explained that the house and the garage were pre-existing and nonconforming as to setback only. A new foundation would be constructed under the house and the separate garage, with both structures being raised within the required setback area. The house had a small portion of the rear el sited inside the required setback area that would be raised for the new foundation. There would be no change to the massing of that portion of the dwelling sited within that area. Other alterations would be undertaken as part of the renovation outside of the required setback areas that would not need relief from this Board. The garage roof would be raised from about 18'4" to about 22'4" in order to increase second floor space for an artist's studio without any human habitation. There was substantial discussion about whether the Applicant could have a shower and tub, or just a shower or no shower or tub at all. The Board was divided. It was pointed out that town meeting did not pass such a restriction and the Board had allowed at least a shower in other studios. Some Board Members were concerned that people might use it for human habitation anyway and it was more likely to happen if there was a shower or shower and tub. When asked about the shower allowed in a similar building on Cliff Road, one Board Member stated that it was due to the fact that the studio was to be used as an exercise room. Interested attorney, Bill Hunter, present for another case, stated that the Board had allowed a shower in other cases and that he hated to see that restriction reduced farther without justification. Koseatac and Tupper were in favor of allowing the shower. O'Mara, Sevens and Wiley were not. Koseatac eventually voted against the second motion prohibiting a shower and wanted it specifically stated that it was not because he did not support the request for relief but he was opposed to the "inconsistency" in allowing or not allowing at least a shower in these ancillary structures.

Action/Vote: IT WAS VOTED FOUR IN FAVOR (SEVRENS, O'MARA, WILEY, TUPPER) AND ONE OPPOSED (KOSEATAC) TO GRANT THE SPECIAL PERMIT PURSUANT TO SECTION 139-33A TO ALTER AND EXPAND THE STRUCTURES AS PROPOSED, (Sevrens/Tupper). A motion was made and seconded (Koseatac/Tupper) to grant relief with a shower. There were two votes in favor (Koseatac, Tupper) and three opposed (Sevrens, O'Mara, Wiley). A motion was then made and seconded (O'Mara/Wiley) for reconsideration and received a unanimous vote. A new motion was made and seconded conditioned on no shower or tub, which resulted in the vote above and a grant of relief.

Conditions: No exterior construction between June 15th and September 15th ; HDC; structures shall be no closer to the lot lines than currently sited; no shower or bathtub located within the garage/studio structure without further relief from this Board; no human habitation of the garage/studio structure without further relief from this Board.

18. RICHARD BEAUDETTE AND RICHELLE D'ELIA (035-07), 3 ANNA DRIVE:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: There were three letters on file in favor from abutters and an affidavit from the previous owner Brad Murray.

Representing: Attorney Richard Beaudette for himself as the Applicant

Discussion: Attorney Beaudette represented himself as the Applicant before the Board. He stated that he and his wife had recently purchased the single-family dwelling knowing that there was an issue with the front yard setback intrusion. The front stoop had been constructed by the previous owners about 2.5 feet into the required 20-foot front yard setback area, mistakenly thinking that the setback was ten feet and that the property was still located in the R-1 zoning district. They had not known that the zoning district had changed a few months before they applied for the building permit to R-10 with a 20-foot front yard setback requirement. The Building Permit even stated R-1. They received a CO as well without comment from the Building Department. Brad Murray the former owner submitted an affidavit detailing how the stoop ended up in the setback. His father had not used a surveyor at the time. Beaudette stated that they were asking the Board to validate what was there and had no intention of building within the required front yard setback area any further. No surveyor needed to have been involved to obtain special permit relief prior to 1990 and the intrusion was not greater than five feet and no closer to the lot line than four feet, all of which applied to this situation. Applicant stated that there would be a financial hardship to his family if forced to remove it. The only abutter that was impacted was Anna Drive.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT PURSUANT TO SECTION 139-16C(2) TO VALIDATE THE SITING OF THE FRONT STOOP OF THE DWELLING, (Wiley/Koseatac).

Conditions: Exhibit A; only the existing dwelling and front stoop, as shown upon Exhibit A, is hereby validated; no other construction shall take place in the front setback area.

19. THE CORKISH COOPERATIVE, INC., (036-07), 320 POLPIS ROAD:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorney Melissa Philbrick for the Applicant

Discussion: Philbrick detailed the history of the property and various lots involved as well as the previous permits granted by this Board. Applicant was before the Board to reconfigure the lot lines in order to merge the various lots at the request of the Land Court who was waiting for such action by the ZBA before approving the plan before it. They were not proposing any changes to the nine dwelling units on the site with this Application. No new lots would be created but the lot would continue to be conforming as to frontage and lot area.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE MODIFICATION OF THE PREVIOUSLY GRANTED VARIANCE TO MERGE THE LOTS INTO ONE LOT,

(Koseatac/Wiley).

Conditions: Exhibit A; lots as described above shall be considered merged for zoning purposes.

OTHER BUSINESS:

The Board voted unanimously, on a motion made by Koseatac and seconded by O'Mara, to allow release of the Town Counsel's opinion to the public concerning increases of ground cover by special permit if the ground cover ratio was already nonconforming.

The meeting was adjourned at 2:30 PM (Wiley/O'Mara)

Respectfully submitted by Linda Williams, recording staff.